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8
9 **IN THE SUPERIOR COURT OF STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF YAVAPAI**

11 **STATE OF ARIZONA,**

12 **Plaintiff,**

13 **v.**

14 **STEVEN CARROLL DEMOCKER,**

15 **Defendant.**

Cause No. P1300CR20081339

Division 6

**STATE'S RESPONSE TO DEFENDANT'S
MOTION TO PRECLUDE COMPUTER
FORENSIC EXPERTS AND REPORTS
REGARDING INTERNET SEARCHES**

16 The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney,
17 and her deputy undersigned, hereby submits its Response to Defendant's Motion to Preclude
18 Computer Forensic Experts and Reports Regarding Internet Searches and requests that
19 Defendant's Motion be denied. The State's Response is supported by the following
20 Memorandum of Points and Authorities.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. The State has disclosed the Encase case files which were used by Detective**
23 **Steve Page.**

24 This case is the first time that Detective Steve Page learned to use the Encase Program. At
25 his interview on April 27, 2010 Detective Page explained that he was aware the Encase
26 Program had case files that kept track of the searches he had done on the various computers on

1 which he had used that investigative program. Counsel for the State had relied on the testimony
2 at a previous hearing that such files were unknown, albeit by a different computer expert,
3 Randy Arthur, head of the DPS Forensic Computer Lab. Counsel for the State promptly
4 informed counsel for the Defendant, Anne Chapman, that these files would be disclosed as
5 quickly as possible. This disclosure has been accomplished and took place as soon as the file
6 copying could take place, i.e., within a matter of days. This information is not critical to the
7 Defense because it is merely a compilation of the keywords used by Detective Page in
8 attempting to investigate the contents of Defendant's computer. Page gave examples of these
9 key words such as the words "kill" and "homicide".

11 **II. Detective Steve Page became confused during his interview after several hours.**

12 Detective Steve Page was interviewed for several hours from approximately 2 p.m.
13 until approximately 7 p.m. at night. He admitted that he had failed to fully prepare for the
14 interview and became confused during the course of the interview. Toward the end of the
15 interview, Detective Page was no longer sure of when the internet searches that were
16 conducted on Defendant's computer took place. Page was able to testify as to when some of
17 the searches were last viewed and when certain files were created. His confusion has been
18 clarified and he has reviewed his findings with his mentor at the DPS Computer Lab, Paul
19 Lindvay.
20

21 Paul Lindvay is the forensic computer analyst that reviewed Detective Page's findings
22 in his January 29, 2010 report and signed off on those findings as having been "peer reviewed".
23 Detective Page's confusion will go to the weight of his testimony. His interview can be
24 completed when counsel is ready to reschedule.
25
26

1 The State has timely previously disclosed and is also offering Paul Lindvay as an expert
2 on the Encase Program and the investigation and timing of the internet searches. This timing
3 can be established by bracketing the searches between other searches that were conducted on
4 Defendant's computer, as was alluded to in Detective Page's interview. Additionally, "file
5 created dates" and "file last visited dates" can document when a file was last visited or created.
6
7 Mr. Lindvay is more extensively qualified than Detective Page and has worked with the Encase
8 Program for approximately 7 years.

9 This computer search evidence documents the fact that Defendant was premeditating
10 the murder of his ex-wife Carol Kennedy shortly after their divorce took place. It was disclosed
11 to the Defense at the very beginning of the case and in subsequent hearings and reports,
12 including the Chronis and Simpson hearing. It has been available for their review since the
13 initial computer imaging of Defendant's computer. This evidence is absolutely critical to the
14 State's case and supports the element of premeditation.
15

16 **III. The State was ignorant of the existence of the Encase case files. Defense has**
17 **had the hard drives for analysis almost as long as the State. There is no actual prejudice**
18 **demonstrated.**

19 Promptly upon learning of the existence of the case files from the Encase Program
20 these files were disclosed. It turns out that these files contain little more than the hundreds of
21 "key words" that were used by Page to search Defendant's computer and contain no vital
22 information about anything in this case. It is simply untrue that Defendant's ability to cross-
23 examine Detective Page was interfered with in any way. Attorney Anne Chapman completely
24 dismantled Detective Page on cross-examination in his pretrial interview to the point where he
25 no longer knew what he was talking about and was embarrassed almost to the point of tears.
26

1 That was when the interview was terminated because the RMIN building was closing for the
2 night. Counsel for the State declined to take Detective Page down to the Osborne, Maledon
3 Law Offices where Detective Page could be further embarrassed.

4 The hard drives that were imaged in this case and investigated by Detective Page were
5 duplicated for both parties. The Defense has had notice of this information since the very
6 beginning of the case. There can be no prejudice to Defendant when such early disclosure has
7 taken place and Defendant is the person who created the evidence. There is no new information
8 here. Admittedly, the State should have turned over the Encase case files that were used by
9 Detective Page, but the State was misinformed about the existence of such files by the head of
10 the DPS Forensic Computer Lab.

11
12 **IV. Defendant conducted six internet searches that are not unfairly prejudicial**
13 **and are probative of the key element of Defendant's premeditation of the murder of his**
14 **ex-wife.**

15
16 Six internet searches were conducted using such terms as "how to kill someone" and
17 "how to collect insurance proceeds in case of homicide". Additionally, the other searches that
18 surround the searches that are at issue become relevant on the basis of their timing. In this case
19 Detective Page became confused about the exact timing of all these searches and the meaning
20 of some of the information contained in the computer related to that timing. The information
21 that is certain is that Defendant was doing research on "how to kill someone" prior to the time
22 of his ex-wife's murder and he was also researching "how to collect insurance proceeds in the
23 case of a homicide". Some of the cached topics that came up during those searches were things
24 like "how to make a homicide look like a suicide" and "how to make a homicide look like an
25 accident". These topics were discovered in remnants of web pages that were discovered in
26

1 Defendant's computer. These searches constitute relevant, probative evidence of Defendant's
2 state of mind leading up to the murder of Carol Kennedy. The Defense would like nothing
3 better than to eliminate any evidence that demonstrates that Defendant was thinking about
4 killing someone prior to the murder of Carol Kennedy, but the fact of the matter is that such
5 evidence exists and is highly relevant in this case to the critical element in the State's case of
6 premeditation. Paul Lindvay or Detective Page will be able to testify as to the timing of these
7 searches and when these files were created or last visited.
8

9 Rule 401 and 402 of the Rules of Evidence allows for the admission of all evidence that
10 is relevant. There is no argument to be made that this evidence is not relevant. Addressing the
11 argument that it is prejudicial, the only issue is whether it is unfairly prejudicial. The court
12 should not be misled by the mention of topics that came up when the search term "how to kill
13 someone" was used. We live in the digital age where most people own or have access to a
14 computer and have experience with how the internet works. Furthermore, it is easily explained
15 how such cached topics crop up during an internet search. This is not unfairly prejudicial
16 evidence, but rather evidence of someone using Defendant's password protected computer to
17 do research on how to kill someone approximately 30 days before someone murdered his ex-
18 wife. It is not coincidence, but relevant, probative evidence of the key element of premeditation
19 in the State's case.
20
21

22 CONCLUSION

23 The State of Arizona has made massive disclosure in this case. Given the voluminous
24 amount of information developed some mistakes have been made in the disclosure and
25 unintentional omissions made in reliance on incorrect information provided to the prosecutors.
26 The State and the public interest should not be punished for good faith errors that have been

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1 corrected as soon as possible. Additionally, the Court should not overlook the fact that simply
2 because some evidence is prejudicial does not mean it is "unfairly" prejudicial. The forensic
3 computer search evidence is critical to the key element of premeditation in the State's case.
4 The State requests that Defendant's motion be denied.

5 RESPECTFULLY SUBMITTED this ^{4th} 10 day of May, 2010.

6
7
8 Sheila Sullivan Poik
YAVAPAI COUNTY ATTORNEY

9
10 By: _____

11 Joseph C. Butner
Deputy County Attorney

12
13 COPIES of the foregoing delivered/emailed this
14 10th day of May, 2010 to:

15 Honorable Thomas J. Lindberg
16 Division 6
Yavapai County Superior Court
17 (via email)

18 John Sears
19 107 North Cortez Street, Suite 104
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21 Larry Hammond
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